

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA ex rel.
JOHN A. WOOD, and on behalf of the
STATES of CALIFORNIA, COLORADO,
CONNECTICUT, DELAWARE,
FLORIDA, GEORGIA, HAWAII,
ILLINOIS, INDIANA, LOUISIANA,
MASSACHUSETTS, MICHIGAN,
MINNESOTA, MONTANA, NEVADA,
NEW HAMPSHIRE, NEW JERSEY,
NEW MEXICO, NEW YORK, NORTH
CAROLINA, OKLAHOMA, RHODE
ISLAND, TENNESSEE, TEXAS,
VIRGINIA, WISCONSIN and the
DISTRICT OF COLUMBIA,

Plaintiffs,

v.

ALLERGAN, INC.,

Defendant.

No. 18-CV-9857

**RELATOR'S UNCONTESTED
NOTICE OF INTENT TO
VOLUNTARILY DISMISS
WITHOUT PREJUDICE AND
PROPOSED ORDER**

Plaintiff-Relator John A. Wood ("Relator") hereby notices his intent to dismiss without prejudice this litigation pursuant to Fed. R. Civ. P. 41(a)(2) and 31 U.S.C. § 3730(b)(1), of the federal False Claims Act ("FCA"), with the approval of this Court.

Relator initially filed his claims under seal in this Court on July 26, 2010, *United States ex rel. Wood v. Allergan*, No. 10-cv-5654 (S.D.N.Y.) ("*Wood I*"), at a time when it was unknown and unknowable that two skeleton FCA complaints were then pending under seal against Allergan, Inc. ("Allergan" or "Defendant"). After remaining under seal for nearly six years, the United States declined intervention, and *Wood I* was unsealed on March 21, 2016 (*Wood I*, Dkt. 24). Wood then filed a Second Amended Complaint on March 21, 2016 (*Wood I*, Dkt. 27) and a Third Amended Complaint ("TAC") on May 23, 2016 (*Wood I*, Dkt. 38).

Allergan moved to dismiss the TAC in *Wood I* on August 4, 2016. This Court denied Defendant Allergan's Motion to Dismiss, but the Second Circuit reversed. *United States ex rel. Wood v. Allergan, Inc.*, 899 F.3d 163 (2d Cir. 2018). Thus, in accordance with the mandate of the Second Circuit, this Court subsequently dismissed *Wood I* without prejudice. *See Wood I*, Dkt. 140.

Relator re-filed his claims under seal in the above-captioned litigation on October 25, 2018 (Dkt. 1) ("*Wood II*"). After the United States declined intervention, the Court unsealed the Complaint on November 30, 2018 (Dkt. 2). On February 8, 2019, Defendant filed a Motion to Dismiss (Dkt. 28), in which it argued, *inter alia*, that the *Wood II* Complaint violates the FCA first-to-file bar, 31 U.S.C. § 3730(b)(5), because *Wood II* was filed before the time had expired for Relator to potentially file a Petition for Writ of Certiorari in *Wood I*. Relator disagrees with Defendant's pending Motion to Dismiss, including but not limited to its interpretation of the FCA's first-to-file bar.

On February 12, 2019, the Court entered an Order (Dkt. 31), directing that Relator "shall file any amended complaint by March 1, 2019" and that Relator "will not be given any further opportunity to amend the complaint to address issues raised by the motion to dismiss." In the present circumstances, Relator does not intend to amend the Complaint in *Wood II*. However, out of an abundance of caution, and to move this action toward a more efficient and timely resolution by not litigating the first-to-file argument raised by Defendant in its Motion to Dismiss *Wood II*, Relator hereby notices his intent to dismiss this litigation without prejudice pursuant to Fed. R. Civ. P. 41(a)(2) and 31 U.S.C. § 3730(b)(1), of the federal False Claims Act ("FCA"), with the approval of this Court, and to promptly re-file this litigation as a new action in this Court.

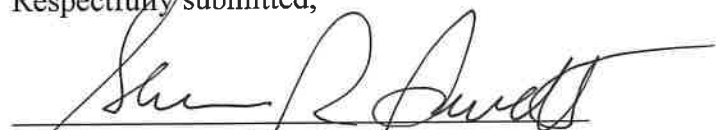
Relator's counsel has the consent of the United States and Attorney General to dismissal of this action without prejudice. The Department of Justice has advised that it will be filing a separate notice indicating its consent. Relator's counsel has been advised by Hillary Chapman, on behalf of the National Association of Medicaid Fraud Control Units, that a notice to advise as to the Plaintiff-States' position on this Uncontested Notice of Intent to Voluntarily Dismiss Without Prejudice will be filed separately. Counsel of record for Defendant Allergan has advised that Defendant consents to the requested dismissal without prejudice.

For all of the reasons set forth above, Relator respectfully requests that the Court dismiss without prejudice this litigation to allow Relator to re-file his claims, once the consents of the United States and Plaintiff-States have been filed with the Court. All parties reserve their rights with respect to any such new filing.

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Dated: March 1, 2019

Respectfully submitted,



Sherrie R. Savett (*pro hac vice*)

Lane L. Vines (*pro hac vice*)

Berger Montague PC

1818 Market Street, Suite 3600

Philadelphia, PA 19103

Email: ssavett@bm.net

lvines@bm.net

Tel.: (215) 875-3000

W. Scott Simmer

Baron & Budd, P.C.

600 New Hampshire Ave., NW, Suite 10A

Washington, DC 20037

Email: ssimmer@baronbudd.com

Tel.: (202) 333-4849

Counsel for Plaintiff/Relator Wood

SO ORDERED:

For the reasons set forth above, and for other good cause, the Court hereby Orders that the above-captioned litigation is dismissed without prejudice. The Clerk of Court is directed to promptly close this docket.

Dated: _____, 2019

JESSE M. FURMAN
United States District Judge